

DEC 7 9 1996

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COMMENTS

I. Introduction

In these Comments, PanAmSat will focus on the Joint Board's recommendations for mandatory contributions to universal service support mechanisms. Although, as discussed below, the Joint Board mentions "satellite operators" among those who should be required to contribute to the universal service fund, PanAmSat asks the Commission to clarify that such requirements do not extend to satellite system operators whose services are provided on a non-common carrier basis or are international in nature.

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II. Mandatory Contributors

The Telecommunications Act of 1996,² among other things, directed the Commission to create a Federal-State Joint Board to recommend changes to the structure, scope and administration of the Commission's universal service policies.³ In accordance with the principals established by the 1996 Act, on November 7, 1996, the Joint Board presented the Commission with its recommendations for sweeping changes in the FCC universal service policies. The Recommended Decision covers new ground by expanding both the categories of institutions eligible for support (*i.e.*, schools, libraries and hospitals) as well as the types of entities required to provide contributions to the universal service fund (*i.e.*, enhanced service providers, CMRS providers).

The Joint Board based its recommendations for mandatory contributors on Section 254(b) of the 1996 Act.⁴ Section 254(b) states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute . . . to preserve and advance universal service." To implement this provision, the Joint Board recommends that the Commission interpret the term "telecommunications carrier" as broadly as possible.⁵ The Joint Board further recommends that, for the purposes of identifying which entities must contribute to universal service support mechanisms, the Commission adopt a definition of "interstate telecommunications" that is similar to the one used for determining TRS support.

Specifically, the Joint Board recommends that "interstate telecommunications" include, but not be limited to, the interstate portion of the following:

² Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act"). The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et. seq.* .

³ 47 U.S.C. § 254(a)(1).

⁴ Recommended Decision at 779 (citations to the Recommended Decision are to paragraph numbers).

⁵ *Id.* at 784.

cellular telephone and paging, mobile radio, operator services, PCS, access (including SLCs), alternative access and special access, packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services.⁶

According to the Joint Board, "satellite operators" should be required to contribute to the universal service fund, but only to the extent that these entities are considered "telecommunications carriers" providing "interstate telecommunications services."⁷ PanAmSat requests that the Commission clarify that it will not be required to contribute to the universal service fund because it provides international service, not interstate service, and because it does not fall within the definition of a "telecommunications carrier."

III. PanAmSat Does Not Provide Interstate Services

By definition, international communications are not "interstate telecommunications" for universal service purposes. The Joint Board recognized that, under the Communications Act definition of "interstate communication," a communication is not "interstate" unless it "originates in one [U.S.] state, territory, possession or the District of Columbia and terminates in another [U.S.] state, territory, possession or the District of Columbia."⁸ Needless to say, international communications do not fit within this definition.

PanAmSat's service offering is entirely international in nature. Subject to the exception discussed below, PanAmSat's transmissions either originate outside the United States, or terminate outside the United States, or both. The United States lies outside the footprint of PanAmSat's satellite in the Indian Ocean region, and much of the traffic on PanAmSat's Atlantic and Pacific Ocean region satellites, which have beams covering portions of the

⁶ *Id.* at 785.

⁷ *Id.*

⁸ *Id.* at 785.

United States but are designed to provide international service, never touches United States.⁹

In limited cases, PanAmSat's satellites may be used to provide service that is international in nature but that includes connections between U.S. points. For example, an international VSAT network may include multiple terminals located in the United States that, at times, communicate with one another. Under the Commission's "separate system" policies, such incidental traffic within the United States has been treated essentially as if it were international, so that it was permissible for PanAmSat to transmit incidental communications at a time when the separate system policies prohibited it from providing U.S. domestic service. It is worth noting that PanAmSat may have no way of determining to what extent, or even whether, international networks with multiple U.S. locations actually are used for transmissions between points within the United States on an incidental basis.

In short, PanAmSat provides services that are solely international. Despite the Joint Board's unexplained reference to "international/foreign" in its proposed definition of "interstate telecommunications,"¹⁰ it is clear that PanAmSat does not provide interstate services in the sense intended to determine mandatory contributor status. It would be patently unfair, moreover, to require PanAmSat to contribute to a fund that will benefit only consumers of domestic U.S. communications services in connection with services that are international in nature.

IV. PanAmSat is Not a "Telecommunications Carrier"

PanAmSat also should not be required to make universal service fund payments because it is not a "telecommunications carrier." The 1996 Act defines the term "telecommunications carrier" as "any provider of telecommunications services," and the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of

⁹ For example, PanAmSat may have customers for whom it provides space segment for transmissions from Tokyo to Hong Kong, without any interconnection to domestic U.S. facilities.

¹⁰ Recommended Decision at 785.

the facilities used.”¹¹ Congress further stated that “the term ‘telecommunications service’ is defined as those services and facilities offered on a ‘common carrier’ basis, recognizing the distinction between common carrier offerings that are provided to the public . . . and private services.”¹² PanAmSat does not fall within this definition.

PanAmSat’s licenses require it to provide service on a private, non-common carrier basis. Consistent with this requirement, PanAmSat does not hold itself out to provide services indifferently or indiscriminately. Rather, PanAmSat negotiates agreements with its full time customers on a case-by-case basis in order to meet their individual needs and requirements. The Commission consistently has found that, under the “NARUC I” standard, satellite service providers that do not make indifferent service offerings may operate as non-common carriers.¹³ Thus, PanAmSat is required to, and does, operate as a non-common carrier.¹⁴

Moreover, the distinction between common carriers and private carriers in the context of universal service is well established, and carries over into the designation of entities entitled to receive from the universal service fund. The Recommended Decision proposes to limited eligibility for universal service support to common carriers.¹⁵ Thus, should the Joint Board's mandatory contribution requirements apply to PanAmSat, it would be in the position of having to contribute to the universal service fund while at the same time being ineligible to receive from it. The Joint Board’s Recommended Decision recognizes that it would be inherently unfair to require non-common carriers to contribute to a universal service fund when “such providers do not substantially benefit from the PSTN.”¹⁶ For reasons

¹¹ 47 U.S.C. § 153(46).

¹² Jt. Statement of Managers, S. Conf. Rept. No. 104-230, 104th Cong., 2nd Sess. 115 (1996).

¹³ See, e.g., Notice of Proposed Rulemaking (CC Docket No. 96-98), FCC 96-182 at ¶ 247; Brightstar Communications Limited, 8 FCC Rcd. 1387 (1993).

¹⁴ By their nature, moreover, the bulk capacity agreements PanAmSat offers are not intended for the “public,” but rather are designed for the multinational corporations, international television program providers, global financial institutions and other large-scale organizations with specific telecommunications needs that comprise PanAmSat’s client base.

¹⁵ Recommended Decision at 155.

¹⁶ *Id.* at 794.

as fairness as well as statutory interpretation, therefore, PanAmSat should be deemed exempt.

IV. Conclusion

Accordingly, for the reasons stated above, PanAmSat respectfully requests that the Commission clarify that it will not be required to contribute to universal service support mechanisms.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of PanAmSat Corp. was sent by first-class mail, postage prepaid, this 19th day of December, 1996, to each of the following:

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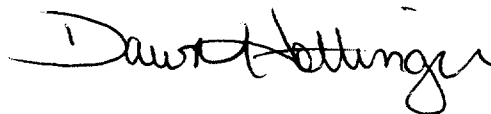
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